



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Lorette LeClair
d/b/a LeClair's Garage, Inc.
182 Highway 4
Danbury, NH 03230

Re: 400 Fremont Road, Chester, NH

ADMINISTRATIVE ORDER
No. WMD 04-05

April 21, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Lorette LeClair doing business as LeClair's Garage, Inc. pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Lorette LeClair is an individual doing business as LeClair's Garage, Inc. and having a mailing address of 182 Highway 4, Danbury, NH 03230.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Lorette LeClair and Oscar LeClair Sr. (Mr. LeClair is deceased) are the owners of land at 400 Fremont Road, Chester, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 2771 , Page 2274, and identified on Chester Tax Map 9 as Lot 7 ("the Site").
4. On April 29, 2001, DES personnel responded to a fire at the Site. As a result of the fire, DES personnel conducted a non-notifier inspection of the Site on May 3, 2001.

5. As a result of the non-notifier inspection, DES personnel issued a RIC1 to Mr. LeClair advising him to cease operating an unpermitted solid waste facility; notify DES as a marketer of used oil; seal hazardous waste/used oil containers; label hazardous waste/used oil containers; manage tires in accordance with the Solid Waste Rules; and Manage batteries in accordance with the Hazardous Waste Rules.

6. Mr. LeClair achieved compliance with the issues outlined in the May 3, 2001 RIC1 on July 23, 2003.

7. On February 9, 2004, February 18, 2004, and February 24, 2004, DES received several complaints alleging that used oil, gasoline, and tires were not being properly managed at the Site.

8. On February 11, 2004, DES personnel investigated the complaints by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Lorette LeClair's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules. Wayne LeClair, Lorette LeClair's son, was present at the time of the Inspection.

9. During the Inspection, DES personnel observed the following:

- a. One unsealed drum of antifreeze behind the garage;
- b. Six lead-acid batteries stored on the ground;
- c. Several areas of dark staining at the front of the property;
- d. A rainbow sheen was noted in one of the puddles along the drive way; and
- e. The loader at the Site leaks oil. Mr. LeClair informed DES personnel that he had placed a "diaper" made up of vehicle cushions onto the loader in an effort to contain the leaking oil.

10. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.

11. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

12. Lorette LeClair is a generator of hazardous waste as defined by RSA 147-A:2, VI.

13. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.

14. During the Inspection, DES personnel observed the following in regards to hazardous waste determinations:

- a. One unlabeled drum outside the storage vehicle which Mr. LeClair states contains gasoline;
- b. Six inaccessible drums outside of the storage vehicle. One drum is labeled "waste oil" and the others are not labeled; and

c. Two unlabeled 55-gallon drums at the rear of the Site.

15. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.

16. The container identified in paragraph C.14 was not labeled with the words "Used Oil for Recycle".

17. Env-Wm 807.06(b)(6) requires used oil generators to manage containers of used oil in such a manner as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters.

18. Lorette LeClair did not prevent spillage of used oil.

19. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."

20. The stained soil and the sheen on the puddle identified in paragraph C.9 represents a discharge of hazardous waste that requires the generator to clean up the discharge.

21. Env-Wm 807.06(b)(17) requires generators of used oil to maintain on file copies of all bills of lading for three years from the date of shipment.

22. During the Inspection, Mr. LeClair informed DES personnel that the bills of lading for used oil shipments are kept at his mother's home in Danbury, NH.

23. Env-Wm 809.02 states "persons who generate or collect spent lead-acid batteries destined for reclamation shall store the batteries in a manner designed to ensure that the battery housings do not break or leak acid onto the soil or into any groundwaters or surface waters."

24. The lead-acid batteries identified in paragraph C.9 were not stored in a manner to prevent leakage onto the soil or into groundwaters.

25. Env-Wm 110.01(c)(142) defines "universal waste" as "any of the following hazardous wastes that may be managed in accordance with Env-Wm 1100 in lieu of Env-Wm 300 through Env-Wm 700: batteries; pesticides; mercury-containing devices; lamps; cathode ray tubes; and antifreeze."

26. The antifreeze identified in paragraph C.9 is a universal waste as defined by Env-Wm 110.01(c)(142).

27. Env-Wm 110.01(c)(143) defines "universal waste handler" as "a generator of universal waste".

28. Lorette LeClair is a universal waste handler as defined by Env-Wm 110.01(c)(143).

29. Env-Wm 1102.03(c)(1) requires generators of universal waste to keep containers of universal waste closed except when universal waste is being added to or removed from the container.
30. The antifreeze container identified in paragraph C.9 was not closed.
31. Env-Wm 506.01(b) requires that all hazardous waste generators comply with all surface water standards as specified in the Clean Water Act and the Federal Safe Drinking Water Act.
32. Env-Ws 421.02(a) states "these rules shall apply only to potential contamination sources listed in RSA 485-C:7 that purchase, handle, or store any regulated substances in regulated containers."
33. RSA 485-C:7, II (f) specifies waste and scrap processing and storage, including, but not limited to: junkyards, scrap yards, and auto salvage yards; wastewater treatment plants; dumps, landfills, transfer stations and other solid waste facilities; and wastewater or septage lagoons as potential contamination sources.
34. The Site is a potential contamination source as specified by RSA 485-C:7, II(f).
35. Env-Ws 421.03(f) defines "regulated substance" as "oil or a substance listed in 40 CFR 302, 7-1-90 edition."
36. RSA 146-A:2, III defines "oil" as "petroleum products and their by-products of any kind, and in any form including, but not limited to, petroleum, fuel, sludge, crude, oil refuse or oil mixed with wastes and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for heating or processing."
37. Env-Ws 421.05(b) states "fueling or transferring regulated substances from or to containers shall be done only over an impervious surface."
38. During the Inspection, Mr. LeClair informed DES personnel that he pokes a hole into the corner of gasoline tanks and drains the gasoline into 5-gallon containers. The gasoline is then placed into drums. Mr. LeClair then uses the gasoline in vehicles at the Site.
39. 40 CFR 122.26(b)(14) requires that facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, apply for a National Pollutant Discharge Elimination System ("NPDES") permit.
40. As of the date of this Order, Lorette LeClair has not applied for an NPDES permit.
41. During the Inspection, DES personnel also observed approximately 2,000 scrap tires, old furniture, telephone poles, and scrap metal.
42. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
43. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the

demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

44. The scrap tires, old furniture, telephone poles, and scrap metal observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII.

45. RSA 149-M:9, II states that “ It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.”

46. Solid waste, specifically telephone poles and old furniture, have been disposed at the Site. This Site is not approved to accept solid waste.

47. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

48. The tires observed during the Inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).

49. As a result of the Inspection, DES personnel issued a Report of Initial Complaint Investigation (“RICI”) to Mr. LeClair advising him to immediately manage all regulated substances in accordance with Env-Ws 421, Best Management Practices; store all batteries on Site in accordance with the Hazardous Waste Rules; store and manage all scrap tires at the Site in accordance with the Solid Waste Rules; and identify the contents of all containers at the Site and properly manage.

50. On February 26, 2004, DES personnel conducted a follow-up inspection of the Site. Mr. LeClair was present during the follow-up inspection. DES personnel observed or learned the following during the follow-up inspection:

- a. Mr. LeClair had begun to sort through drums at the Site to identify their contents. Most of the drums were empty.
- b. Mr. LeClair had contacted a company to make arrangements to remove the scrap tires from the Site.

D. DETERMINATION OF VIOLATIONS

1. Lorette LeClair has violated RSA 149-M:9, II by failing to dispose solid waste at a permitted solid waste facility.
2. Lorette LeClair has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.
3. Lorette LeClair has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
4. Lorette LeClair has violated Env-Wm 807.06(b)(6) by failing to prevent discharges of used oil to the soil.
5. Lorette LeClair has violated Env-Wm 807.06(b)(17) by failing to maintain copies of bills of lading for three years from the date of shipment.
6. Lorette LeClair has violated Env-Wm 809.02 by failing to store lead-acid batteries in a manner to prevent leakage and breakage.
7. Lorette LeClair has violated Env-Wm 1102.03(c)(1) by failing to close containers of universal waste, specifically waste antifreeze.
8. Lorette LeClair has violated Env-Wm 506.01(b) by failing to comply with surface water standards as specified in the Federal Clean Water Act and the Federal Safe Drinking Water Act.
9. Lorette LeClair has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Lorette LeClair as follows:

- Immediately** cease disposing of solid waste at an unpermitted facility.
2. **Within 20 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility.
3. **By July 9, 2004**, remove all solid waste at the Site to a permitted solid waste facility.
4. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
5. **Immediately** ensure that all used oil containers are store in a manner to prevent discharges to the soil.

6. **Immediately** ensure that all used oil bills of lading are kept on file at the Site.
7. **Immediately** ensure that all lead-acid batteries are stored in a manner to prevent leakage and breakage.
8. **Immediately** ensure that all universal waste containers, specifically waste antifreeze, are closed.
9. **By June 1, 2004**, contact Thelma Murphy, Environmental Protection Agency Storm Water Coordinator at (617) 918-1615, relative to obtaining a NPDES permit.
10. Submit one written status report to DES **by July 16, 2004**, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**
11. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2456
e-mail: cmcgary@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Lorette LeClair of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Lorette LeClair remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Lorette LeClair's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

By copy of this Order, this matter is being referred to the New Hampshire Department of Environmental Services, Oil Remediation and Compliance Bureau, for investigation of possible violations of RSA 146-A.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Anthony P. Giunta, P.E., Director
Waste Management Division



Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 700 1670 0000 0584 3205

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Josh Whipple, DES ORCB
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Chester, NH
Rockingham County Registry of Deeds